

CHAPTER 3 - NON-COVERED EMPLOYMENT

3.1 GENERAL

Due to the unique and varied missions of this Agency and the National Guard, the statutes provide for a number of categories of employees in DEMA. Arizona State Service employees who are competitively hired and appointed to positions that are established by the legislature are covered by the ADOA Personnel Rules and are referred to as “covered” employees. All other employees of the agency who are appointed to positions that are established under various statutory exemption provisions of law are referred to as “non-covered” employees.

By simple definition, a non-covered employee is one whose benefits and rights do not fall under the ADOA Personnel Rules. As such, The Adjutant General (TAG) has the final decision in all matters regarding these positions and personnel. Some limited rights may be afforded to some positions within the Agency. These rights, granted as a condition of employment, will be identified and explained at the time of hire. However, by statute, TAG is not bound to the application of the ADOA rules for these positions and may suspend them in the best interest of the Agency.

A careful distinction should be made when applying the term “exempt” to non-covered employees. Non-covered positions are established as being exempt from the Personnel Rules pursuant to various sections of A.R.S. 41-771. Use of the term exempt should not be confused with determining the Fair Labor Standards Act (FLSA) classification of positions as being either Exempt or Non-Exempt from FLSA premium overtime eligibility. See Chapter 9.4.2 for additional information on this subject.

3.2 CATEGORIES OF NON-COVERED EMPLOYMENT

There are several categories of non-covered employment. An employee's benefits and rights are contingent on the category of their position. These categories are set forth in A.R.S. 41-771. The sub-sections are shown below in parenthesis.

These positions are appointees of The Adjutant General and serve at his pleasure. They accrue benefits and protection granted by TAG and none other. They are not protected, nor do the ADOA Personnel Rules or this manual provide guidance. The ADOA Personnel Rules may be considered in personnel actions not otherwise covered by agency rules.

3.2.1 Special Categories (B.1, B.3)

TAG sets specific job requirements and the incumbent is responsible to TAG for compliance. This section affects the following positions:

<u>Position #</u>	<u>Title</u>
AMA0002AHO	Director, Division of Emergency Management
AMA0003AHO	Director, Army National Guard
AMA0004AHO	Director, Air National Guard
AMA0005AHO	Director, Joint Programs Division
AMA0420AHO	Chief Auditor
AMA0421AHO	Resources Manager
AMA0639AHO	Camp Navajo Program Manager
AMA0672,3,4,5,6AIO	Judges, Military Court of Appeals
AMA0677AHO	Director, Project ChalleNGe

3.2.2 Confidential Relationship (B.2)

Individuals in these positions have a direct confidential reporting relationship to an exempt/non-covered official of the Agency. Under this provision, all Active Guard and Reserve (AGR) personnel and Federal Technicians are considered equivalent to an exempt/non-covered (state) employee for reporting purposes.

3.2.3 National Guard Pre-Requisite (A.7, A.12)

Many non-covered positions in DEMA require National Guard membership. These positions are statutorily exempted from ADOA Personnel Rules. A.R.S. Section 41-771.A.7 exempts traditional guardsmen and guard members on state active duty. A.R.S. Section 41-771.A.12 exempts full time state employees of this department who are subject to being called to federal service.

In those instances where a position which has been identified as requiring National Guard membership cannot be filled by a qualified National Guard member, a comparable non-covered position that does not require National Guard membership may be established. Upon becoming vacant, every attempt should be made to recruit a qualified National Guard member and return the position to its previous classification status.

In those positions where National Guard membership is required, the appropriate uniform will be worn. This implies that the uniform will be worn in accordance with regulations. Responsibility for enforcing this falls on the commander.

Brigade/Wing Commanders may approve state employees being a member of any military unit under their command. The appropriate Director, Army or Air National Guard must approve permission for a state employee to hold a military position in another Brigade/Wing in writing. A copy of this approval must be sent to the Administrative Services Officer for placement in the individual's personnel file.

Military grade inversions, while discouraged, are permitted within the Officer or Enlisted corps when approved in writing by the Brigade/Wing Commander. A copy of the approval must be sent to the Administrative Services Officer. However, a grade inversion, which would result in an Officer being supervised by an Enlisted person, is prohibited.

Commanders of each unit that has a large number of non-covered, National Guard membership-required state employees, (Camp Navajo, 161ARW, 162FW, PPMR Security, Project ChalleNGe), will prepare a list of positions which should be classified under each category (paragraph 3.2.3). The commanders will also advise the Administrative Services Officer of any desired or required changes. The Administrative Services Officer will maintain these lists.

3.2.4 ADEM Emergency Positions (Executive Order)

All positions established and used in response to an Emergency Declaration are non-covered. Personnel hired into these positions do not accrue benefits except those specifically granted at the time of employment. They serve at the pleasure of TAG and have no protection under this manual or the ADOA Personnel Rules.

3.2.5 Part Time or Temporary (B.4, B.5)

Non-covered positions that are part time, temporary, or established for the purpose of conducting a special project, study or investigation.

3.2.6 Rehabilitation (B.6)

Non-covered positions that are essentially intended for rehabilitation purposes.

3.2.7 Policy Making (B.7)

Non-covered positions that are determined by the ADOA Director to be directly or indirectly engaged in establishing policy or enforcement standards.